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REMARKS

The claims have been amended without adding new matter in order to correct minor informalities and to address other issues raised by the Examiner. Claims 1, 2, 6, 7, 9, 16, 17, and 21 have been amended. Twenty-one claims remain pending in the application: Claims 1 through 21. Reconsideration of claims 1 through 21 in view of the amendments above and remarks below is respectfully requested.

Claim Rejections - 35 U.S.C. §112

1. Claims 13, 14 and 17-21 stand rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim that which Applicant regard as the invention.

As to claims 13 and 14, claim 9 (from which claims 13 and 14 depend) has been amended to include antecedent basis for "the rise." Specifically, claim 9 has been amended to further describe the portal assembly as "having a width, a height, and a rise." The amendment is supported by the application as filed by at least page 1, lines 23-28 and figure 15. Thus, Applicant respectfully requests that the present rejection to claims 13 and 14 be withdrawn.

As to claims 17-21, claim 17 (from which claims 18-21 depend) has been amended to delete the objectionable language, i.e. "according to the arrangement of step a." Claims 18-21 are rejected for depending on a rejected base claim. Therefore, it is respectfully requested that the present rejection to each of claims 17-21 be withdrawn.

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Claim Rejections - 35 U.S.C. §102

2. Claims 1, 2, 4, 5, 7-10, 12-15 and 17-21 stand rejected under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 6,272,793 (herein the '793 patent) to Davlantes.

The '793 patent teaches a horizontal top frame assembly 50 for "adjusting the height of a pet door panel frame¹". The horizontal top frame assembly comprises a topmost member 56, a horizontal frame member 52, and spacers 54. According to Davlantes, adjusting the height of a pet door panel is achieved by inserting spacers between the topmost member 56 and the horizontal top frame member 52 (See Figure 2 of the '793 patent); thus, merely adjusting the height of the overall door (as opposed to adjusting rise or height of the actual pet doorway).

As shown in Figure 1 of the '793 patent, the horizontal top frame assembly 50 is situated above a weather pane 32. The weather pane 32 is situated above an intermediate horizontal frame member 48. The pet doorway is located below the intermediate horizontal frame member 48. Therefore, in stark contrast to the present application (herein the '267 application) the '793 patent teaches a horizontal top frame assembly 50 comprising spacers 54 which are located at the uppermost portion of a door panel; whereas, the '267 application teaches an adjustable panel door wherein spacers are located adjacent to the portal assembly. Thus, the spacers 54 as taught in the '793 patent could never be adjacent to the portal

¹ See Column 1, line 36 of the '793 patent

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assembly because at least the horizontal top frame member 52, the weather pane 32, and the horizontal frame member 48 separate the spacers 54 from the pet doorway.

In order to further clarify the '267 application from the '793 patent, pending independent claims 1, 7, and 17 have been amended to include the limitation "adjacent to the portal assembly." Claim 9 as previously presented included this limitation. Thus, the '793 patent does not teach each and every limitation of the claims 1, 7, 9, and 17.

As claims 2, 4, 5, 8, 10, 12-15, and 18-21 depend from claims 1, 7, 9, and 17, Applicant respectfully requests that the present rejection be withdrawn from each of the claims 1, 2, 4, 5, 7-10, 12-15, and 17-21.

3. Claims 1, 3-5, 7-9, 11, 12, 15 and 17-21 stand rejected under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 3,932,959 (herein the '959 patent) to Jansons et al.

The '959 patent teaches a shutter assembly "which is easily attached to the vertical portion of [a] window frame²." The Examiner asserts that the top piece 14, bottom piece, and louvers 4 described in the '959 patent are equivalent to the portal assembly as taught by the '267 application.

However, the assembly described in the '959 patent differs appreciably from the portal assembly taught in the '267 application. For example, the louvers 4 of the '959 patent are located between the top piece 14 and the bottom piece throughout the assembly, thus, impeding potential

² See Column 33-34, line 36 of the '959 patent

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entrance and exit through the assembly. As described in the '267 application the purpose of the portal assembly is to "allow the passage of pets³." Further, as defined by Webster's Dictionary, a portal is "a way of entrance or exit."

Therefore, it is clear that the assembly as described by the '959 patent is not in fact a portal assembly as construed by the Examiner because a pet can not pass through or enter or exit through the assembly described in the '959 patent. As such, each of the limitations of independent claims 1, 7, 9, and 17 are not taught by the '959 patent. Specifically, claims 1, 7, 9, and 17 each teach the limitation of a portal assembly which is not described in the '959 patent. As claims 3, 4, 5, 8 10, 11, 12, 15, and 18-21 depend from claims 1, 7, 9, and 17, Applicant respectfully requests that the present rejection be withdrawn from each of the claims 1, 3-5, 7-9, 11, 12, 15, and 17-21.

Claim Rejections - 35 U.S.C. §103

4. Claims 6 and 16 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over U.S. Patent No. 6,272,793 to Davlantes in view of 4,047,331 (herein the '331 patent) to Davlantes.

Claims 6 and 16 are patentable over the '793 patent and the '331 patent because each and every limitation of the claimed invention is not taught by the '331 patent in combination with the '793 patent. As described above, independent claims 1 and 9, from which claims 6 and 16

³ See Page 8, line 6 of the '267 application

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depend, teach an adjustable panel door wherein spacers are located adjacent to the portal assembly. Conversely, the '793 patent teaches spacers which are situated at the uppermost portion of a door panel which could never be adjacent to the portal assembly of the '793 patent because at least the horizontal top frame member, the weather pane, and the horizontal frame member separate the spacers from the pet doorway. The '331 patent has no teaching of spacers at all.

Thus, for at least the reasons presented above, as well as the arguments set forth on pages 7 and 8 of this paper, Applicant respectfully requests that the present rejection be withdrawn from claims 6 and 16.

Double Patenting

5. Claims 1-3, 5, 7, 9-11, 12-14, and 17 are rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-6 and 10-14 of U.S. Patent No. 6,691,483 to Lethers in varying combinations.

Further, claims 6 and 16 are rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-6 and 1-5, respectively, of U.S. Patent No. 6,691,483 to Lethers in view of the '331 patent.

In response, Applicant provides herewith a Terminal Disclaimer to Obviate a Double Patenting Rejection Over a "Prior" Patent ("Terminal Disclaimer") and an authorization to charge Deposit Account No. 50-1616 for any appropriate fees.

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Applicant submits that the Terminal Disclaimer overcomes the nonstatutory double patenting rejection, and thus, claims 1-3, 5-7, 9-11, 12-14, 16, and 17 are in condition for allowance.

CONCLUSION

By way of this amendment, Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Thomas Lebens at (805) 781-2865 so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,

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